



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>MARIA HERNANDEZ,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	<b>Charge No.: 2002CN2642</b>
<b>and</b>	)	<b>EEOC No.: N/A</b>
	)	<b>ALS No.: 12300</b>
<b>MTS &amp; ASSOCIATES, INC.,</b>	)	
	)	
<b>Respondent.</b>	)	

**RECOMMENDED ORDER AND DECISION**

On or about March 7, 2002, Complainant, Maria Hernandez, filed a charge of discrimination with the Illinois Department of Human Rights (IDHR). That charge alleged that Respondent, MTS & Associates, Inc., sexually harassed Complainant.

Respondent failed to file a verified response to Complainant's charge, despite being reminded of that obligation on more than one occasion. As a result, the IDHR issued a Notice of Default against Respondent and filed a Petition for Hearing to Determine Complainant's Damages with the Illinois Human Rights Commission. The Commission granted IDHR's petition, and the requested hearing on damages was held on January 20, 2004.

Despite being served with notice, Respondent did not appear at the scheduled damages hearing. Complainant, though, appeared and presented her evidence. Complainant also filed a written motion for attorney's fees. Although it was served with a copy of that motion, Respondent filed no response. The matter is ready for decision.

**FINDINGS OF FACT**

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. Respondent, MTS & Associates, Inc., is a construction management company.

2. Respondent hired Complainant, Maria Hernandez, in January of 2002.

Complainant worked as receptionist and project manager assistant.

3. Michael Sinda was Respondent's owner and president.

4. On or about February 20, 2002, Sinda invited Complainant into his office and closed the door. He then offered her money if she would allow him to perform oral sex on her. He also told her she wouldn't even have to reciprocate. Complainant was shocked and told Sinda that she was just in the office to work.

5. On or about February 22, 2002, Sinda called Complainant back into his office and asked her if she had thought about his earlier offer. When she told him she wasn't interested and was there just to work, he told her not to pretend he didn't make her think about it. That same day, Sinda put his hands on Complainant's shoulders and told her she should try wearing something more revealing.

6. On or about February 27, 2002, Sinda again asked Complainant if she had thought about his offer. He repeatedly stressed that she wouldn't have to reciprocate. He asked about her relationship with her boyfriend. Complainant kept telling him that she did not want to talk about it and just wanted to do her work. He also told her that she should tell her boyfriend not to pick her up at work because he would drive her home.

7. When other workers in Respondent's office were out performing sales calls and other duties, Complainant and Sinda would be the only ones in the office. After the events of February 27, Complainant was afraid to be in the office alone with Sinda.

8. On February 27, 2002, Complainant left the office for lunch and never returned.

9. Because of her fear of working alone with Sinda, Complainant felt she had to quit her job with Respondent.

10. During her tenure with Respondent, Complainant worked forty hours per week

and was paid \$9.50 per hour.

11. Complainant was out of work for about seven weeks before she found a new job.

12. Since her experience with Respondent, Complainant is afraid to work in a small office with male co-workers.

13. Complainant still has nightmares about being cornered by Sinde. She has difficulty sleeping and experiences nausea and headaches when she thinks about her experiences with Respondent.

14. Complainant should be compensated in the amount of \$15,000.00 for the emotional distress caused by Respondent's actions.

15. Complainant is seeking compensation for the work of attorney Jeffrey Friedman at the rate of \$325.00 per hour for 12.6 hours.

16. The requested hourly rate and the requested number of hours are reasonable under the circumstances and should be accepted.

#### CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act).

2. Respondent is an "employer" as defined by section 2-101(B)(1)(b) of the Act and is subject to the provisions of the Act.

3. As a result of the default entered against Respondent, there are no liability issues to address.

4. Because of its failure to file an objection to Complainant's request for attorney's fees, Respondent has waived its right to object to such fees.

#### DISCUSSION

On November 24, 2003, a panel of the Human Rights Commission entered an order of default against Respondent, MTS & Associates, Inc. As a result of that order, there are no

liability issues to address. Only damages issues remain to be determined.

Although liability is not an issue, a basic overview of the facts is needed to allow a meaningful discussion of the appropriate damages. Respondent, MTS & Associates, Inc., is a construction management company. Respondent hired Complainant, Maria Hernandez, in January of 2002. Complainant worked as receptionist and project manager assistant.

Respondent's owner and president was Michael Sinde. On or about February 20, 2002, Sinde invited Complainant into his office and closed the door. He then offered her money if she would allow him to perform oral sex on her. He also told her she wouldn't even have to reciprocate. Complainant was shocked and told Sinde that she was just in the office to work. About two days later, Sinde called Complainant back into his office and asked her if she had thought about his earlier offer. When she told him she wasn't interested and was there just to work, he told her not to pretend he didn't make her think about it. That same day, Sinde put his hands on Complainant's shoulders and told her she should try wearing something more revealing.

On or about February 27, 2002, Sinde again asked Complainant if she had thought about his offer. He repeatedly stressed that she wouldn't have to reciprocate. He asked about her relationship with her boyfriend. Complainant kept telling him that she did not want to talk about it and just wanted to do her work. He also told her that she should tell her boyfriend not to pick her up at work because he would drive her home.

When other workers in Respondent's office were out performing sales calls and other duties, Complainant and Sinde would be the only ones in the office. After the events of February 27, Complainant was afraid to be in the office alone with Sinde. As a result, on February 27, 2002, Complainant left the office for lunch and never returned. Those facts provide a framework for consideration of an appropriate award of damages.

Complainant maintains that she had to resign because she was afraid of continuing to

work with Sinde. Without using the term, she is arguing that she was constructively discharged. To prove a constructive discharge, Complainant had to prove that Respondent made her working conditions so difficult or unpleasant that a reasonable person in her position would have felt compelled to resign. ***Brewington v. Dep't of Corrections***, 161 Ill. App. 3d 54, 513 N.E.2d 1056 (1st Dist. 1987). The facts in this case arguably meet the ***Brewington*** standard. Three times within a week, Complainant was solicited for sexual activity. Moreover, things appeared to be accelerating since Sinde had touched her, had asked her to wear more revealing clothing, and was trying to convince her to let him drive her home. She had begun to fear being alone in the office with the company's owner and president. Such a situation could force a reasonable person to resign. Therefore, it is recommended that Complainant's resignation be considered a constructive discharge.

A prevailing complainant is presumptively entitled to reinstatement to the job lost due to a civil rights violation. In this case, though, reinstatement is not recommended. Complainant testified that she still fears meeting Sinde and she fears working in a small office with men. She has been able to find other employment, and placing her in Respondent's working environment would be terrifying for her. Therefore, she should not be reinstated.

She should, however, be awarded backpay for the time she was unemployed. During her tenure with Respondent, Complainant worked forty hours per week and was paid \$9.50 per hour. That works out to \$380.00 per week. She was out of work for about seven weeks before finding suitable employment. She would have earned \$2660.00 during that period, so that amount is the recommended backpay award.

Complainant also is entitled to an award of emotional distress damages. Complainant did not work long for Respondent, and brief periods of harassment seldom justify large awards. Nonetheless, in this case a substantial award is appropriate, because Complainant's experience working with Sinde had serious long-term effects on her.

Since her experience with Respondent, Complainant is afraid to work in a small office with male co-workers. She still has nightmares about being cornered by Sinde. She once saw Sinde and his wife at a local store and she froze in fear. She has difficulty sleeping and experiences nausea and headaches when she thinks about working for Respondent. Considering the relatively short period of time that Complainant was harassed, hers may be an unusually strong reaction, but she should be compensated for the harm she has suffered. Under Commission precedent, a respondent is liable for all the harm done to the complainant even if the complainant has the proverbial “eggshell skull.” See ***Palumbo and Palos Community Hospital***, \_\_\_ Ill. HRC Rep. \_\_\_, (1996CA0145, January 10, 2000).

The Commission awarded \$15,000.00 in emotional distress damages in the case of ***Lopez and Martin Title Co.***, \_\_\_ Ill. HRC Rep. \_\_\_, (1997CF2130, July 8, 2002). The complainant in that case experienced considerable embarrassment and, like Complainant in this case, grew to fear her harasser and dread contact with him. Certainly, ***Lopez*** and the instant case are not perfectly analogous. For example, the complainant in ***Lopez*** endured far more lengthy harassment, in that she was harassed for years. Nonetheless, the complainant in ***Lopez*** did not experience nightmares or grow to fear men in an office environment like Complainant in this case. On balance, focusing less on the egregiousness of the respondent’s behavior than on its effects, a \$15,000.00 award is justified in the instant case. It is recommended that Complainant be awarded that amount as compensation for her emotional distress.

In addition, there are other types of relief that were not specifically requested at the damages hearing but that are appropriate in this situation. Respondent should be ordered to clear its records of any reference to this action or to the underlying charge of discrimination. Respondent should be ordered to cease and desist from further sexual harassment. Also, because of the delay in Complainant’s receipt of the backpay due her, it is necessary to award

her pre-judgment interest on the backpay award in order to make her whole.

Finally, there is the issue of attorney's fees. The starting point for analysis of a motion for attorney's fees is the case of ***Clark and Champaign National Bank***, 4 Ill. HRC Rep. 193 (1982). Under Clark, Complainant must first establish that the hourly rate she seeks is appropriate. Then, she must establish the number of hours reasonably expended on the case. Those facts should be established through the use of affidavits.

Complainant is seeking compensation for 12.6 hours of work at \$325.00 per hour. Although she submitted information on her attorney's claimed hourly rate and the number of hours devoted to this litigation, Complainant did not provide any affidavit in support of that information. Moreover, there was nothing provided to establish the reasonableness of the requested rate or number of hours. Clearly, the fee petition does not meet the ***Clark*** standards and that might have been a problem for Complainant. In this situation, though, Respondent has made things easier for her.

At the damages hearing, Complainant was given leave to file a written motion for fees. That motion was timely filed and was served on Respondent. Despite that service, Respondent failed to file any response to the motion. As a result, Respondent has waived the issue of attorney's fees. ***Mazzamuro and Titan Security, Ltd.***, \_\_\_ Ill. HRC Rep. \_\_\_, (1989CN3464, October 21, 1991). In light of that waiver, it is recommended that Complainant's fee request be granted in its entirety. The recommended attorney's fee is \$4,095.00.

#### RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding the following relief:

- A. That Respondent pay to Complainant the sum of \$2660.00 for lost backpay;
- B. That Respondent pay to Complainant prejudgment interest on the backpay award, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

C. That Respondent pay to Complainant the sum of \$15,000.00 as compensation for the emotional distress suffered by Complainant as a result of Respondent's actions;

D. That Respondent pay to Complainant the sum of \$4,095.00 for attorney's fees reasonably incurred in the prosecution of this matter;

E. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

F. That Respondent cease and desist from further acts of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: May 7, 2004